

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

GOYKE HEALTH CENTER, P.C., )  
Individually and as the representative of a ) Case No. 08 CV 4049  
Class of similarly-situated persons, )  
 )  
Plaintiff, ) Judge Anderson  
 ) Magistrate Judge Mason  
 )  
v. )  
 )  
MIDWEST WASTE SERVICES, LLC, )  
 )  
Defendant. )

**AGREED MOTION ALLOWING MIDWEST WASTE SERVICES, LLC LEAVE TO  
FILE ITS ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S  
CLASS ACTION COMPLAINT**

Defendant, MIDWEST WASTE SERVICES, LLC (“Defendant”), by and through its attorneys, SmithAmundsen LLC, for its Agreed Motion for Leave to File its Affirmative Defenses to Goyke Health Center, P.C.’s (“Plaintiff”) Class Action Complaint, states as follows:

### A. Factual Background

1. On or about June 4, 2008, Plaintiff filed a Class Action Complaint in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, styled, Goyke Health Center, P.C. v. Midwest Waste Services, LLC, Case No. 08 CH 19978.

2. Plaintiff's Class Action Complaint alleges that Defendant violated the federal Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. Section 227.

3. A copy of Plaintiff's Class Action Complaint and Summons were served on Defendant's registered agent on or after July 1, 2008.

4. On July 17, 2008, Defendant filed a removal petition to this Court based on federal question jurisdiction. A copy of the removal petition was previously e-filed with this

Court and is designated Document No. 1. Plaintiff's Class Action Complaint is "Exhibit A" to Document No. 1.

**B. Defendant Seeks Leave to File its Answer and Affirmative Defenses to the Class Action Complaint**

5. Defendant seeks leave to file its Answer and Affirmative Defenses to Plaintiff's Class Action Complaint within 30 days of service of the Class Action Complaint. Due to the press of other business and personal matters, Defendant's counsel was unable to file an answer to Plaintiff's Class Action Complaint. This is the reason for Defendant's "excusable neglect" under Rule 6(b) as to why Defendant has not yet filed an answer to Plaintiff's Class Action Complaint.

6. Plaintiff is in agreement with the instant Agreed Motion for Leave and does not object to Defendant filing its Answer and Affirmative Defenses to the Class Action Complaint at this juncture. In addition, Plaintiff will not be prejudiced by the filing of Defendant's Answer and Affirmative Defenses because: (1) if the instant case had not been removed from the Circuit Court of Cook County, the filing of Defendant's Answer and Affirmative Defenses would have been timely; (2) no proceedings have occurred in the Circuit Court of Cook County prior to, and as of the date of, the removal; (3) no proceedings have occurred in the case at bar since the date of the removal; (4) no further pleadings have been exchanged between the parties; (5) no discovery has been exchanged, nor a discovery order entered, in either Circuit Court or District Court; and (6) only a few days have elapsed since removal of this action to District Court.

7. By filing its Answer and Affirmative Defenses to the Class Action Complaint, Defendant is not engaging in intentional delay or willful contempt of the Federal Rules of Civil Procedure, and, moreover, is acting in good faith. *See Betty K. Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333 (11<sup>th</sup> Cir. 2005).

WHEREFORE, Defendant, MIDWEST WASTE SERVICES, LLC, prays that this Honorable Court grant its Agreed Motion for Leave to File its Answer and Affirmative Defenses to Goyke Health Center, P.C.'s Class Action Complaint, and for such other relief as this Honorable Court deems just and proper.

Respectfully submitted,

MIDWEST WASTE SERVICES, LLC

By: /s/ Vasudev N. Addanki  
One of its Attorneys

Eric L. Samore, Esq. (ARDC No. 6181345)  
Vasudev N. Addanki, Esq. (ARDC No. 6278927)  
SmithAmundsen LLC  
150 North Michigan Avenue, Suite 3300  
Chicago, Illinois 60601  
Telephone: (312) 894-3200  
Facsimile: (312) 894-3210